

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 864 OF 2019

Maimuna Wd/o Akhtar Bhopalwala)
 Age: 50 years, Occ: Housewife)
 An adult of Indian Inhabitant)
 Residing at Room No.6, 1st Floor)
 Vikram Building, Opp. Sheetal)
 Cinema Kurla, Mumbai – 400070)....Appellant
 (Orig. Applicant)

Versus

1. ~~Abhijeet S/o Dayandeo Thorat~~)
~~Age about 27 years,~~)
~~Occ: Driver, R/o Baban Chwal~~)
~~Room No.1, Ravalpada,——~~)
~~Shankarwadi, Dahisar (E),~~)
~~Mumbai.~~)
2. ~~Popat S/o Maruti Desai~~)Amendment
~~Age about 45 years~~)carried out as
~~Occ: Business /Owner~~) per order
~~of Bolero Jeep No. MH-04-CJ~~)dated 14th Nov.
~~380 R/o Room No.4,~~)2014 passed in-
~~Shankarwadi Awalpada,——~~)Civil App. No.
~~Near Jame High School,——~~)2933 of 2014
~~Dahisar (E) Mumbai~~)1/11/2014
~~At present: Pandurant~~)
~~Apartment~~)
~~Plot No.203, Mahesh Park,~~)Res. Nos. 1 & 2
~~Tulinj Road, Nalasopara (E),~~)(Orig. Opp-
~~Thane—~~)Party Nos.1 &2
3. New India Assurance Co. Ltd.)
 Through its Branch Manager,)

Jeevan Seva, 2nd Floor,
Santacruz (W), Mumbai -
400054

)
)
) R. No. 3
(Insurer)
....Respondents

Mr. Sajid Shamim a/w Mr. Jishan Ansari i/b S. Shamim & Co.
Advocate for the Appellant.

Mr. S. M. Dange, Advocate for the Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th FEBRUARY, 2024.

Oral Judgment. :

1. By way of this appeal, the claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the appellant/claimant that due to accidental injuries, the claimant has suffered 45% permanent physical disability but, this fact is not considered by the tribunal. Learned counsel further submitted that the claimant was doing garment business and she was earning Rs.3,000/- per month but, this fact not considered by the tribunal, while awarding compensation. Learned counsel further submitted that the tribunal has not awarded future prospects, it be awarded. Hence,

requested to allow the Appeal.

3. Learned counsel for the Respondent No.3/Insurance Company submitted that no evidence was produced on record to prove the income of the claimant. Learned counsel further submitted that no permanent physical disability is caused to the claimant due to accidental injuries. The disability certificate is given on higher side. While passing the order, the tribunal has considered all the aspects. No interference is required in it. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short "the Tribunal").

5. To prove the income, the Claimant, Maimuna Bhopalwala examined herself at Exhibit-15. She has stated that due to accidental injuries, she has suffered 45% permanent physical disability. She further stated that before the accident she was running readymade garments in Kurla and getting income, of Rs.3000/- to 4,000/- per month and from that income she was maintaining her family. But, due to accidental injuries, she has permanently disabled and she is unable to perform any business.

6. While dealing with the issue of income of claimant, the tribunal has observed that no evidence was produced on record to prove that deceased was doing business. To prove the disability the claimant has examined Dr. Satish Shah, he has stated that due to accidental injuries the claimant has suffered following injuries;

1. Head injury,
2. Fracture of left radius distal/3rd,
3. Fracture of left tibia lower/3rd,
4. The patient had undergone major surgery with tibia interlocking nailing and thereafter, she had undergone the surgery for removal of implant.

. He further stated that due to accidental injuries the claimant has suffered following disabilities.

1. Pain, limp, difficulty in walking in the left leg.
2. Pain in left wrist with difficult in grasping object.
3. Difficulty in doing cooking and house work.
4. The claimant gets on and off headache.
5. The claimant is not able to do her routine work.

7. While dealing with the issue of the disability, the Tribunal has observed that on the account of disability, claimant is not entitled to any compensation and the tribunal has given reason for it, I do not find infirmity in it. In my view, it has come on record that the claimant had suffered fracture injuries there is no disability due to fracture injuries. Considering nature of injuries and medical expenses

incurred on treatment, the Tribunal has awarded total compensation of Rs.1,90,726/-. In my view, it is on lower side hence, I am considering Rs.75,000/- more under all heads.

8. In view of above, I pass following order.

ORDER

- i. Appeal is partly allowed.
 - ii. The claimant is entitled for enhanced amount of Rs.75,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
 - iii. The Respondent/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
 - iv. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)